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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KETCHIKAN PULP COMPANY,

Defendant.

No. A04-0104 CV (JKS)

**CERCLA CONSENT DECREE FOR SETTLEMENT OF RESPONSE
COSTS AND PERFORMANCE OF RESPONSE ACTIONS
AT TONGASS NATIONAL FOREST SITES**

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I. BACKGROUND

a. From the early 1950's through 2000, Ketchikan Pulp Company ("KPC") utilized logging camps, log transfer facilities ("LTFs") and other facilities in the Tongass National Forest to provide timber for processing facilities at Ward Cove, Ketchikan, and Annette Island. These activities occurred under the auspices of the long-term timber sale contract defined in Paragraph 3(z) (the "Timber Contract") entered into between KPC and the United States Department of Agriculture ("USDA") Forest Service ("Forest Service"). During the course of operations under the Timber Contract, the Forest Service became aware of contamination conditions associated with current and historical operations under the Timber Contract at the Logging Facilities (defined in Paragraph 3(n)) and associated, at least in part, with current and historical operations of other parties. KPC, the Forest Service, and the Alaska Department of Environmental Conservation ("ADEC") began investigating the nature and extent of contamination at Logging Facilities and developed response actions to respond to contamination conditions in order to meet applicable regulatory standards.

b. Response actions at certain of the Logging Facilities were undertaken by the Forest Service and KPC under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601, *et seq.*, as amended ("CERCLA"). Response actions at other Logging Facilities were undertaken by the Forest Service and KPC under the terms of the Timber Contract and/or the laws of the State of Alaska, including AS 46.03.822 and 18 AAC 75.300 (collectively, "State Superfund").

c. The Forest Service and KPC each incurred, and are incurring, response costs through the conduct of response actions at the Logging Facilities, and in the case of the Forest Service, through oversight of KPC's response actions.

d. KPC is continuing to perform response actions at the East Twelve Mile, Ratz Harbor, and Francis Cove Sites under the auspices of the East Twelve Mile Administrative Order on Consent, the Ratz Harbor Administrative Order on Consent, and the Francis Cove Administrative Order on

Consent, and agrees in this Consent Decree to perform a future response action at the Naukati Site.

e. The United States of America (“United States”), on behalf of the Forest Service, has engaged in extensive negotiations with KPC concerning the resolution of environmental cleanup obligations at the Logging Facilities under CERCLA, the Timber Contract, and State Superfund. The Parties have compiled information concerning each of the Logging Facilities and the response costs incurred by each Party in relation to each Site. Through this Consent Decree, the Parties seek to resolve response cost claims pertaining to the Logging Facilities identified in Paragraph 3(n) below and to the Connell Dam Site, and to provide an overall framework for completion of ongoing response actions at the East Twelve Mile, Ratz Harbor, Francis Cove, Naukati, and Thorne Bay Landfills Sites.

f. On February 21, 1997, the United States, the Forest Service, KPC, and, for limited purposes only, Louisiana-Pacific Corporation (“LP”) entered into an agreement to resolve then outstanding takings, contractual and environmental issues (“1997 Agreement”). LP agreed to be bound only to specified provisions of the 1997 Agreement as set forth in Paragraph 21.b of that Agreement, which included provisions requiring LP to provide financial assurance for, and, under specific circumstances, to guarantee performance of, KPC’s environmental obligations. As set forth in Paragraph 2 of this Consent Decree, LP agrees to be bound by this Consent Decree for the limited purposes of granting and receiving covenants not to sue, receiving protection from contribution actions, and continuing, in a modified way, certain obligations initially agreed to by LP in the 1997 Agreement.

g. Simultaneously with the lodging of this Consent Decree, the United States, on behalf of the USDA Forest Service, has filed a complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and AS 46.03.822, seeking the performance of response actions and reimbursement of response costs incurred or to be incurred for response actions taken at, or in connection with, the release or threatened release of hazardous substances or petroleum products at

the Logging Facilities.

h. Neither KPC nor LP admits any liability to the Forest Service arising out of the transactions or occurrences alleged in the complaint. KPC and LP each assert that the Forest Service itself is responsible for response costs arising out of the transactions or occurrences alleged in the complaint. The Forest Service does not admit any such liability.

i. The United States, KPC, and LP agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties to this Decree, it is hereby ordered, adjudged, and decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607 and 9613(b), and supplemental jurisdiction over pendent claims arising under the laws of the State of Alaska pursuant to 28 U.S.C. §1367. The Court also has personal jurisdiction over KPC and LP. Solely for the purposes of this Consent Decree and the underlying complaint, KPC waives all objections and defenses it may have to jurisdiction of the Court or to venue in this District. Solely for the purposes of this Consent Decree, LP waives all objections and defenses it may have to jurisdiction of this Court and venue in this District. KPC and LP shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the Forest Service, KPC, and, for the limited purposes set forth herein, LP and upon their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or

real or personal property, shall in no way alter the status or responsibilities of KPC and LP under this Consent Decree. LP is entering into this Consent Decree for the limited purpose of guaranteeing certain obligations of KPC, providing financial assurance, granting and receiving covenants not to sue, and receiving protection from contribution actions, as set forth herein.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

(a) "ADEC" shall mean Alaska Department of Environmental Conservation.

(b) "Administrative Record" shall mean the official administrative record established and maintained by the Forest Service for each of the Logging Facilities. With respect to the Thorne Bay Landfills Site and the Thorne Bay Logging Camp Site only, the Administrative Record shall be comprised of a common administrative record which shall apply equally to both Sites; however, combining those Administrative Records shall not affect the separate status of each such Site.

(c) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

(d) "Connell Dam Site" shall mean the impoundment area currently or historically associated with the Connell Lake Dam and the stream course of Ward Creek below the Dam, to the extent it is within federally-owned or managed land as of the effective date of this Consent Decree ("Effective Date") (defined in Section XVII below).

(e) "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

(f) "Day" shall mean a calendar day. In computing any period of time under this Consent

Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day. Dates and times specified in this Consent Decree shall be determined by the time in Anchorage, Alaska.

(g) "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

(h) "East Twelve Mile AOC" shall mean the Administrative Order on Consent and any appendices attached thereto, docket no. 10-03-01, entered into between KPC and the Forest Service, which is attached as Appendix A to this Consent Decree.

(i) "Forest Service" shall mean the United States Department of Agriculture Forest Service and any successor departments, agencies or instrumentalities of the United States.

(j) "Francis Cove AOC" shall mean the Administrative Order on Consent and any appendices attached thereto, docket no. 10-03-03, entered into between KPC and the Forest Service, which is attached as Appendix B to this Consent Decree.

(k) "Government Reserved Rights" means claims arising on National Forest System land (including after-acquired land) located within the Tongass National Forest (i) for the enforcement of obligations of KPC to perform response or restoration work under the CERCLA Consent Decree, including the Administrative Orders on Consent incorporated into the Consent Decree, or (ii) reserved by the United States under Paragraphs 24-27 (General Reservation of Rights by United States and Reservation of Rights as to Unknown Conditions and Information).

(l) "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

(m) "KPC" shall mean Ketchikan Pulp Company.

(n) "Logging Facilities" shall mean the following Sites, defined by the following descriptions and by relevant materials in the Administrative Record for each Site:

(i) “Coffman Cove Site” means the former logging camp located in the City of Coffman Cove, on the northeast coast of Prince of Wales Island, approximately 55 miles northwest of Ketchikan, Alaska. The Site is comprised of the former South Coast shop area, fuel storage areas, sortyard/equipment storage area, bunkhouse and residential heating tank areas, AT&T Alascom area, incinerator area, battery disposal area near the former South Coast shop area, and the remainder of KPC’s former LTF, camp, maintenance, and fuel storage areas.

(ii) “East Marble Island Site” means the former logging camp located on the east side of Marble Island off the northwest coast of Prince of Wales Island. The Site is located approximately 40 miles northwest of Craig, Alaska. The Site covers approximately 4 acres and is comprised of the LTF area, the former shop area, fuel storage area, trailer areas, and to the north of these areas, the borrow pits and sawmill areas.

(iii) “East Twelve Mile Site” means the former logging camp located at the head of Twelve Mile Arm Inlet on the east coast of Prince of Wales Island, Alaska. The Site is situated west of Forest Service Road 2120, approximately 20 miles southeast of Craig, Alaska. The Site covers approximately 13 acres, and is comprised of the former logging camp area, including a shop area, debris dump area, and road circle area.

(iv) “El Capitan Site” means the former LTF and logging camp located on El Capitan passage on the northwest coast of Prince of Wales Island, Alaska. The Site is approximately 45 miles north of Craig, Alaska. The Site covers approximately 14 acres and is comprised of a former main camp area with a generator/fuel storage tanks area, utility area, maintenance shops area, and vehicle storage areas. An LTF area located to the east is comprised of former fuel storage areas, log transfer device area, and equipment staging areas, and is included in the estimated area.

(v) “Fire Cove LTF Site” means the former LTF and logging camp located in Neets Bay on the west coast of Revillagigedo Island, approximately 40 miles north of Ketchikan, Alaska. The Site covers approximately 11 acres and is comprised of the former LTF and logging

camp including an A-Frame log transfer device area, elevated saw fuel area, and the areas used by Phoenix Logging and Silver Bay Logging including shop areas, an incinerator area, generator van area, saw gas area, and a truck spill area.

(vi) “Fire Cove Metal Pit Site” means the disposal pit (rock quarry) located approximately ½ mile from the Fire Cove LTF. The Site covers approximately ½ acre.

(vii) “Francis Cove Site” means the former LTF and logging camp located on Behm Canal, on the west coast of Revillagigedo Island, Alaska. Francis Cove is approximately 30 miles north of Ketchikan, Alaska. The Site covers approximately 7 acres and is comprised of a breakwater/lagoon area formerly used as an LTF, the Chevron drums area, debris fill areas, a borrow pit with some surface debris, and uplands areas formerly used for equipment staging, fueling, and maintenance activities.

(viii) “Hassler Island Site” means the former LTF and camp located on Hassler Island near the northwest coast of Revillagigedo Island, Alaska. Hassler Island is approximately 35 miles north of Ketchikan, Alaska. The Site consists of three areas totaling approximately 1 acre. These areas include: an LTF with an A-frame and fuel storage; a rockpit/burn pile, which was used for maintenance and fuel storage; and a filled muskeg area, which included bunkhouses, a maintenance shop and fuel storage. All three parts included equipment parking.

(ix) “Klu Bay Site” means the former LTF and camp located at Klu Bay, located on the northwest coast of Revillagigedo Island, Alaska. Klu Bay is approximately 35 miles north of Ketchikan, Alaska. The Site is approximately 2 acres and is comprised of the former LTF and barge ramp area with associated fuel storage areas, a second former fuel storage area near Forest Service Road 8400-000, a third former fuel storage area located in a sand pit near Forest Service Road 8400-000, and a former oil and parts storage area approximately 3 miles from the LTF area near Forest Service Road 8400-000.

(x) “Labouchere Bay Site” means the former LTF and camp located at the northwest tip of Prince of Wales Island, Alaska. Labouchere Bay is approximately 90 miles northwest of Ketchikan, Alaska. The Site covers approximately 28 acres and is comprised of former fuel storage tanks and pipelines, fueling areas, generator sites, maintenance shops areas, an ash disposal area, a fuel truck spill area, an LTF area, and two solid waste disposal facilities formerly used by the logging camp for disposal of scrap metal and camp wastes.

(xi) “Margaret Bay Site” means the former LTF and camp located in Margaret Bay, which is in Traitor’s Cove on the northwest coast of Revillagigedo Island, Alaska. The Site is approximately 35 miles north of Ketchikan, Alaska. The Site covers approximately 4 acres and is comprised of former fuel storage tanks and fueling areas, equipment storage and parking areas, a former sawmill area, an A-frame log transfer device area, and tidelands beach and rock knob areas.

(xii) “Naukati Site” means the area encompassed by the former LTF and camp located on the northwest coast of Prince of Wales Island, Alaska. The Site was operated by KPC from approximately 1974 to 1998. The Naukati Site is located approximately 30 miles north of Craig, Alaska near the unincorporated community of Naukati. The Site covers approximately 16 acres and is comprised of former fuel storage tanks and fueling areas, equipment storage and parking areas, a maintenance shop area, a burn area, a barge ramp area, home heating oil tank areas, and an A-frame log transfer device area. The Site includes the generator area formerly owned and operated by KPC (“Naukati Generator area”).

(xiii) “Polk Inlet Site” means the former LTF and camp located in Polk Inlet, which is part of Skowl Arm on the east coast of Prince of Wales Island, Alaska. The Site is approximately 30 miles southeast of Craig, Alaska. The Site covers approximately 6 acres and is comprised of former fuel storage tanks and fueling areas, equipment storage and parking areas, a maintenance shop area, a burn area, a heating oil tank spill area, a former drum storage area, 3 areas where contaminated soil was bio-remediated and left in place, a small uplands camp area, an

A-frame log transfer device area, and a turn-around area where a KPC employee resided during timber harvesting operations.

(xiv) “Ratz Harbor Site” means the former logging camp located at Ratz Harbor on the east coast of Prince of Wales Island. The Site is located approximately 40 miles north of the City of Thorne Bay. The Site covers approximately 2 acres and is comprised of a former uplands logging camp, maintenance shop and related facilities area, an unnamed creek area, and an intertidal area.

(xv) “Shelter Cove Site” means the former LTF and camp located on the west coast of Carroll Inlet, which is on the southwest coast of Revillagigedo Island, Alaska. The Site is approximately 20 miles northeast of Ketchikan, Alaska. The Site covers approximately 8 acres and is comprised of a former LTF area, camp area, and maintenance shop areas.

(xvi) “Shrimp Bay Site” means the former LTF and camp located on the northwest coast of Revillagigedo Island, Alaska. Shrimp Bay is approximately 35 miles north of Ketchikan, Alaska. The Site covers approximately 4 acres and consists of three areas: an LTF and fuel/oil storage area adjacent to Shrimp Bay; a shop and maintenance area to the south along Forest Service Road 8000-000; and a nearby rockpit.

(xvii) “Southwest Neets Site” means the former LTF and camp located in SW Neets Bay, which is on the northwest coast of Revillagigedo Island, Alaska. The Site is approximately 30 miles north of Ketchikan, Alaska. The Site covers approximately 3 acres and is comprised of former fuel storage tanks and fueling areas, a maintenance shop area, a burn area, a barge ramp area, vehicle storage areas, an A-frame LTF area, and rock pits located along Forest Service Road 8060-5000 containing soil excavated from cleanup areas.

(xviii) “Suemez Island/Port Refugio Site” means the former LTF and camp located on Suemez Island off the west coast of Prince of Wales Island, Alaska. The Site is approximately 20 miles southwest of Craig, Alaska. The Site covers approximately 6 acres and is

comprised of an LTF, associated fuel storage and maintenance shop areas, and a small sawmill area. The Site also includes a nearby barge landing area that was the location of a former caretaker camp, an equipment staging area, and a hydraulic oil spill in 1997.

(xix) "Thorne Bay Landfills Site" means the Thorne Bay Landfills #1-3 area and surrounding drainages, located 1.5 miles west of the City of Thorne Bay, Alaska, along the south side of the Thorne River Highway, covering approximately 32 acres.

(xx) "Thorne Bay Logging Camp Site" means the logging camp, sortyard, and woodwaste #4 landfill located in the vicinity of the City of Thorne Bay. The logging camp area of the Site covers approximately 80 acres and is comprised of a former logging camp, including a maintenance shop area, bulk fuel facilities area, office buildings area, generator building area, LTF areas, residential structures areas, equipment storage areas, and other facilities and areas used to support logging operations. The woodwaste landfill #4 portion of the Site covers approximately 10 acres and is located approximately ½ mile from the City of Thorne Bay on the north side of the Thorne River Highway. The sortyard portion of the Site is located at the head of Thorne Bay, approximately ½ mile from the City of Thorne Bay. The sortyard area covers approximately 28 acres, including 13 acres of tidelands, and is comprised of LTF areas, fuel/oil storage and dispensing facilities areas, tidelands areas, and areas used for upland log sorting, scaling, and storage.

(xxi) "Whale Pass Site" means the former LTF located approximately 20 miles northwest of the City of Coffman Cove on the east coast of Prince of Wales Island, Alaska. A portion of the Site is located on a shot rock fill pad bordered to the east by the waters of Whale Pass. The Site covers approximately 5 acres and is comprised of an A-Frame log transfer device area, bulkhead area, debris disposal area, fuel/oil storage and dispensing area, and a maintenance shop area.

(xxii) "Winter Harbor LTF Site" means the LTF and camp located at the head of Winter Harbor on the west coast of Prince of Wales Island. The Site is adjacent to Forest Service

Road 5400 and located approximately 20 miles north of Craig, Alaska. The Site covers approximately 8 acres and is comprised of the former LTF and fuel storage areas and the former shop and fuel dispensing areas.

(xxiii) "Winter Harbor Roadside Dump Site" means a waste disposal area covering approximately ¼ acre located south of the Winter Harbor LTF area. The Site is located across from a rock pit immediately adjacent to Forest Service Road 2050.

(o) "LP" shall mean Louisiana-Pacific Corporation.

(p) "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

(q) "Party" shall mean one of the United States, KPC, and, for the limited purposes set forth herein, LP. "Parties" shall mean the United States, KPC, and, for the limited purposes set forth herein, LP.

(r) "Plaintiff" shall mean the United States.

(s) "Ratz Harbor AOC" shall mean the Administrative Order on Consent, docket no. 10-03-02, entered into between KPC and the Forest Service, which is attached as Appendix C to this Consent Decree.

(t) "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

(u) "Site" shall mean any of the individual facilities identified as "Logging Facilities" or the Connell Dam Site.

(v) "Settlement Agreement" shall mean the agreement executed simultaneously with the execution of this Consent Decree by and between the United States, the Forest Service, KPC, and, for limited purposes only, LP, which is attached as Appendix D to this Consent Decree.

(w) "State" shall mean the State of Alaska.

(x) "State Superfund" shall mean AS 46.03.822 and the regulations promulgated by ADEC at 18 AAC 75.300.

(y) “Thorne Bay Landfills AOC” means the Administrative Order on Consent, No. 1005049601, executed by KPC, LP, and the Forest Service during March 1997, which is attached as Appendix E to this Consent Decree.

(z) “Timber Contract” shall mean the long-term Timber Sale Contract #A10fs-1042 entered into between KPC and the United States, as that contract was earlier modified by agreement of KPC and the United States prior to the Tongass Timber Reform Act of 1990 (TTRA), further modified by Congress in TTRA and its text revised by the Secretary of Agriculture pursuant to the TTRA, and as it was further modified through parts I, II, III, IV, and VI of the 1997 Agreement (including offering packages for each Specified Offering).

(aa) “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

(ab) “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. PERFORMANCE OF WORK

4. **Ratz Harbor Site.** KPC shall complete the response actions and other work required under the terms of the Ratz Harbor AOC and shall otherwise comply fully with that AOC.

5. **East Twelve Mile Site.** KPC shall complete the response actions and other work required under the terms of the East Twelve Mile AOC and shall otherwise comply fully with that AOC.

6. **Francis Cove Site.** KPC shall complete the response actions and other work required under the terms of the Francis Cove AOC and shall otherwise comply fully with that AOC.

7. **Naukati Site.**

a. Naukati Generator Cleanup Work. KPC shall conduct a response action to address the remaining contamination at the Naukati Generator area of the Naukati Site in accordance with

the work planning and other requirements set forth in Appendix F (“Naukati Generator Cleanup Work”) and the Work Plan and schedule approved by the Forest Service thereunder. The objective of this response action shall be to meet the applicable cleanup level established under State Superfund, which shall be the Method 3 cleanup level unless ADEC, with the Forest Service’s concurrence, determines otherwise. To establish that the response action is sufficient, KPC must obtain a “no further action” or “no further remedial action planned” determination from ADEC. If ADEC determines that future use of the Naukati Generator area of the Naukati Site should be restricted, the Forest Service shall work with ADEC to resolve what restrictions, if any, should apply and shall implement any restrictions agreed upon at no charge to KPC. Throughout the Naukati Generator Cleanup Work, the Forest Service will coordinate with ADEC to resolve any potential conflicts between comments provided by the Forest Service and ADEC regarding the Naukati Generator Cleanup Work, including those pertaining to the documents described in Appendix F.

b. Site Access

(i) If the Naukati Generator area of the Naukati Site or any other property where access is needed to implement the Naukati Generator Cleanup Work is owned or controlled by KPC, KPC shall, commencing on the Effective Date, provide the Forest Service, ADEC, and their representatives, including contractors, with such access at all reasonable times, for the purpose of conducting any activity related to the required Naukati Generator Cleanup Work.

(ii) To the extent performance of the Naukati Generator Cleanup Work requires access to property managed or controlled by the Forest Service, the Forest Service shall provide access to KPC and its contractors at reasonable times, for the purpose of conducting the required Naukati Generator Cleanup Work, at no cost to KPC. In providing such access, the Forest Service shall use appropriate administrative authorities, at no cost to KPC, to assist KPC's efforts to move the existing Alaska Power and Telephone ("AP&T") telephone switch building to a suitable location on land under Forest Service management.

(iii) To the extent the Naukati Generator Cleanup Work requires access to areas owned or controlled by a person other than KPC, the Forest Service, or AP&T, KPC shall use its best efforts to obtain all necessary access agreements in a timely manner and, in any event, at least 30 days prior to the scheduled commencement of any field work element of the Naukati Generator Cleanup Work. For purposes of this Paragraph, “best efforts” includes the payment of reasonable sums of money in consideration of access. If, after using its best efforts, KPC is unable to obtain such agreements in a timely manner, KPC shall promptly notify the Forest Service and shall describe in writing its efforts to obtain access. The Forest Service will then assist KPC in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as the Forest Service deems appropriate.

(iv) To the extent the Naukati Generator Cleanup Work requires the existing AP&T telephone switch building to be moved to a suitable location under Forest Service management, KPC shall, with the concurrence of the Forest Service, move such building or pay the reasonable cost of moving such building.

c. Access to Backfill Material. The Forest Service shall make available to KPC, at no cost to KPC, access to a source of soil or rock located on land managed by the Forest Service that is suitable for use in backfilling areas that are excavated by KPC in performing the Work at the Naukati site.

8. Thorne Bay Landfills Site.

a. Termination of Thorne Bay Landfills AOC. As of the Effective Date, the Thorne Bay Landfills AOC (attached as Appendix E to this Consent Decree) is terminated and shall have no further force or effect, except that Paragraphs 20.1, 20.3, and 21.3 of the Thorne Bay Landfills AOC shall survive the termination.

b. Operation, Maintenance, and Monitoring. The Forest Service will perform or provide for the performance of, at no cost to KPC: (1) the operation, maintenance, and monitoring activities

selected by the Forest Service in the Thorne Bay Landfills Site Action Memorandum dated February 9, 2004, as supplemented on March 5, 2004 (attached as Appendix G to this Consent Decree), and (2) any additional activities selected in that Action Memorandum to address the seeps containing iron and manganese identified in the Action Memorandum.

VI. NOTICE OF COMPLETION

9. After the Forest Service concludes that the removal actions required by the East Twelve Mile AOC, Ratz Harbor AOC, and Francis Cove AOC have been fully performed in accordance with the requirements of the respective AOC, it shall issue a Notice of Completion pursuant to the terms of that AOC. After the Forest Service concludes that the removal action required at the Naukati Site has been completed in accordance with the requirements of this Consent Decree and ADEC has issued a "no further action" letter or a "no further remedial action planned" letter for the Naukati Site, the Forest Service shall issue a Notice of Completion for the Naukati Site.

VII. PROSPECTIVE ENVIRONMENTAL OBLIGATIONS

10. **Reporting Requirements:** Upon request by the United States, KPC will report to the Environment and Natural Resources Division of the United States Department of Justice on the status of its compliance with any obligations arising out of the Government Reserved Rights. The request from the United States shall specify a date by which KPC's report is to be made. If KPC ceases to exist or otherwise fails to provide the reports then, until December 31, 2013, LP shall file such reports on behalf of KPC, except that LP shall continue to file such reports on behalf of KPC with respect to the Thorne Bay Landfills Site until December 31, 2030.

11. **LP's Performance of Obligations Arising Out Of Government Reserved Rights:**

a. Subject to the limitations in Paragraph 11e, LP hereby guarantees unconditionally that, if KPC becomes unable to perform or otherwise satisfy its obligations arising out of the Government Reserved Rights by reason of bankruptcy, or the liquidation or dissolution of KPC as a separate corporation, or for any other reason, then LP shall perform or otherwise satisfy KPC's remaining

obligations arising out of the Government Reserved Rights.

b. If KPC fails to comply with an obligation arising out of a Government Reserved Right imposed by final administrative order or court order (except as provided in paragraph 11c or unless compliance is stayed by court or administrative order), then LP, upon notice by the United States and during the term of its guaranty and subject to the limitations in paragraph 11e, shall perform or otherwise satisfy such obligation on behalf of KPC. The United States' notice shall specify the particular court or administrative order that LP must perform, limited to the terms of a specified order(s). LP's performance will not affect KPC's other obligations arising out of Government Reserved Rights.

c. If any agency issues a unilateral administrative order to KPC under Section 106 of CERCLA or Section 7003 of RCRA, LP's obligation to perform under the conditions set forth in Paragraph 11b is subject to LP's right to challenge the validity or enforceability of the order or to assert any other defenses or claims with respect to the order that would be available to KPC.

d. This Paragraph 11 shall not increase, diminish, or otherwise affect the applicability or operation of the suspension, listing, and debarment laws and regulations of the United States or civil or criminal laws of the United States as they pertain to LP. Nothing in this Consent Decree alters the status of the parent/subsidiary relationship between KPC and LP. In the event LP under this provision is required to satisfy any of KPC's obligations arising out of the Government Reserved Rights, the United States may exercise all its rights and remedies under the environmental laws against LP with respect to LP's acts and omissions from the point that LP is required by Paragraph 11 to perform. Except as specified in Paragraph 11a above, LP reserves the right to assert any defenses or pursue any rights or remedies that may be available to itself or to KPC under the environmental laws or this Consent Decree. However, LP may not re-litigate before courts or administrative agencies orders or issues already litigated or settled by KPC, except to the extent that KPC could do so.

e. Commencing on January 1, 2007, LP's obligations under this Paragraph 11 shall apply only to claims under CERCLA. LP's obligations under this Paragraph 11 shall terminate at midnight on December 31, 2013, except that (1) such obligations with respect to KPC's obligations to perform a response action at the Naukati Site under Paragraph 7 of this Consent Decree shall terminate the later of midnight on December 31, 2013 or issuance by the Forest Service of the Notice of Completion for that Site; and (2) such obligations with respect to any obligations of KPC relating to the Thorne Bay Landfills Site under Paragraphs 25-27 of this Consent Decree (Unknown Conditions and Information) shall terminate at midnight on December 31, 2030.

f. LP enters into this Paragraph 11 voluntarily as part of an overall settlement of this matter and, under Paragraph 11, may be required to satisfy obligations arising out of Government Reserved Rights for which LP may not otherwise be responsible under applicable law.

g. Except as set forth in Paragraph 11a or 11b, or provided by applicable law, KPC (rather than LP) remains the Party primarily responsible for performing or otherwise satisfying obligations arising out of the Government Reserved Rights.

12. Financial Assurance:

a. As ongoing evidence of financial assurance for LP's guarantee, as set forth in Paragraph 11, LP shall provide to the United States, by April 30 of each year that this paragraph is in effect, a letter signed by LP's chief financial officer identifying the following information derived from LP's audited financial statement for the preceding fiscal year: (1) LP's current commercial paper or bond rating from Standard and Poor's or Moody's, LP's tangible net worth, and LP's total assets in the United States, or (2) LP's total liabilities; current liabilities; net working capital; net worth; tangible net worth; net income plus depreciation, depletion, and amortization; current assets; and the percentage and value of LP's assets located in the United States. The letter shall be worded in substantial conformity with the language appearing in 40 C.F.R. § 264.151(f) and shall demonstrate LP's compliance with the criteria of at least one of the financial tests set forth in

subparagraph 12c.

b. Also by April 30 of each year that this Paragraph is in effect, LP's chief financial officer shall provide to the United States: (1) a copy of an independent certified public accountant's report on examination of LP's financial statements for the preceding fiscal year, and (2) a special report from LP's independent certified public accountant to LP's chief financial officer stating that: (a) the independent certified public accountant has compared the financial data identified in the letter required by subparagraph 12a as having been derived from the independently audited, year-end financial statements for the preceding fiscal year, and that (b) in connection with that procedure, no matter came to his or her attention that caused him or her to believe that said financial data should be adjusted.

c. The United States shall annually assess LP's financial information against the criteria of the financial test below that is used by LP's chief financial officer in his or her letter to the United States required by subparagraph 12a above:

(i) Original test: (a) LP's bond rating for its most recent bond issuance must be AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, or Baa as issued by Moody's, or, if LP has no bonds, then LP's commercial paper rating must be A1+, A1, A2, or A3 as issued by Standard and Poor's; (b) LP's tangible net worth must be greater than or equal to four hundred million dollars (\$400,000,000); and (c) LP's total assets in the United States must amount to at least four hundred million dollars (\$400,000,000).

(ii) Alternate Test: LP must meet the criteria appearing in 40 C.F.R. § 264.143(f)(1)(i), utilizing the applicable cost estimate by year set forth in subparagraph 12i, below, as the figure for "current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" referred to in 40 C.F.R. § 264.143(f)(1)(i)(B) and (D).

d. The United States may, based upon a reasonable belief that LP may no longer meet the requirements of this paragraph, require reports of financial condition at any time from LP in

addition to those specified in subparagraphs 12a and 12b. If the United States finds, on the basis of such reports or other information, that LP no longer can meet the criteria of either of the financial tests of subparagraph 12c, LP must provide alternate financial assurance as specified in subparagraph 12e within 30 days after the United States notifies LP of such a finding.

e. If the United States or LP determines that LP is unable to meet either of the financial tests set forth in subparagraph 12c, LP shall provide notice to the Environment and Natural Resources Division of the Department of Justice by April 30 of that year, by certified mail, and will, by May 31 of that year, provide an irrevocable letter of credit to the United States in the amount of the applicable cost estimate by year set forth in subparagraph 12i, below. The letter of credit shall substantially conform to the requirements found in 40 C.F.R. § 264.143(d).

f. If LP is able to demonstrate, through any subsequent showing, that it meets at least one of the financial tests of subparagraph 12c, and the United States agrees in writing, then LP may discontinue the letter of credit established pursuant to subparagraph 12e.

g. The United States may disallow use of the subparagraph 12c assurances on the basis of qualifications in the opinion expressed by the independent certified public accountant in his or her report on examination of LP's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance; the United States will evaluate other qualifications on an individual basis. If the United States notifies LP that it is disallowing use of subparagraph 12c assurances, LP must provide alternate financial assurance as specified in subparagraph 12e within 30 days after such notification.

h. This Paragraph 12 shall remain in effect, and LP will be obligated to comply with its requirements, only until December 31, 2006, or until such time as the Parties may agree in writing, whichever is earlier.

i. The following cost estimates by year shall be used for purposes of the alternate test referenced in subparagraph 12c(ii) above and in the event that a letter of credit is required pursuant

to subparagraph 12e above:

April 30, 2003 to April 29, 2004	\$5,000,000
April 30, 2004 to April 29, 2005	\$3,500,000
April 30, 2005 to December 31, 2006	\$2,000,000

These amounts are not subject to adjustment for draws thereon during any year, but the letter of credit, if required pursuant to subparagraph 12e, shall be in the amounts set forth above notwithstanding any letter of credit draws by the United States during prior years.

VIII. FORCE MAJEURE

13. For purposes of the Naukati Generator Cleanup Work required under this Consent Decree, “force majeure” is defined as an event that arises from causes beyond the control of KPC, or of any entity controlled by KPC, including, but not limited to, its contractors and subcontractors, which delays or prevents performance of any obligation under this Consent Decree despite KPC's best efforts to fulfill the obligation. “Force majeure” does not include financial inability to complete the Work or increased cost of performance.

14. If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, KPC shall notify the Forest Service On-Scene Coordinator orally within four days of when KPC first knew that the event might cause a delay. Within seven business (7) days thereafter, KPC shall provide to the Forest Service in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; KPC's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of KPC, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude KPC from asserting any claim of force majeure for that event for the

period of time of such failure to comply and for any additional delay caused by such failure.

15. If the Forest Service agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event shall be extended, by a written notice from the Forest Service to KPC, by the amount of time corresponding to the delay caused by the force majeure event. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If the Forest Service does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the Forest Service will notify KPC in writing of its decision. If the Forest Service agrees that the delay is attributable to a force majeure event, the Forest Service will notify KPC in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

IX. DISPUTE RESOLUTION

16. Any disputes pertaining to work at the East Twelve Mile, Ratz Harbor, and Francis Cove Sites shall be resolved under the terms of the dispute resolution provisions set forth in the applicable AOC. Any other dispute between the Parties arising under or with respect to this Consent Decree shall be resolved pursuant to the procedures set forth in Paragraphs 17-22.

17. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of KPC that have not been disputed in accordance with this Section.

18. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless that period is extended by written agreement of the Parties to the dispute. The dispute shall be considered to

have arisen when one Party receives from the other Party a written Notice of Dispute.

19. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Forest Service shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, KPC invokes the formal dispute resolution procedures of this Section by serving on the Forest Service a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by KPC.

20. Following receipt of KPC's Statement of Position, the Regional Forester or his designee shall issue a final decision resolving the dispute. The Regional Forester's decision shall be binding on KPC unless, within 15 days of receipt of the decision, KPC files with the Court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to KPC's motion pursuant to the Federal Rules of Civil Procedure.

21. Judicial review of any dispute governed by this Section shall be governed by applicable principles of law. Any judicial review of issues concerning the adequacy of any response actions taken shall be limited to the administrative record and provisions of 42 U.S.C. § 9613(j).

22. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of KPC under this Consent Decree, unless the United States agrees or the Court rules otherwise.

X. COVENANTS NOT TO SUE BY UNITED STATES

23. In consideration of the actions that have and will be performed and the expenditures that have been made by KPC and the commitments of KPC and LP under the terms of the Consent Decree, and except as specifically provided in Paragraphs 24, 25, and 26 of this Consent Decree, the United States covenants not to sue or to take administrative action against KPC or LP pursuant to

Sections 106, 107, or 113 of CERCLA or AS 46.03.822, or for removal actions, removal costs, or natural resource damages under Section 311 of the Clean Water Act (33 U.S.C. § 1321) or Section 1002 of the Oil Pollution Act of 1990 (33 U.S.C. § 2702), with respect to the Logging Facilities or the Connell Dam Site. Except with respect to the East Twelve Mile, Ratz Harbor, Francis Cove, and Naukati Sites, these covenants not to sue shall take effect upon the Effective Date. With respect to the East Twelve Mile, Ratz Harbor, Francis Cove, and Naukati Sites, the covenant not to sue for each Site is conditioned on completion by KPC of all work required under the applicable AOC for that Site or this Consent Decree (with respect to the Naukati Site) and shall take effect upon the issuance by the Forest Service of the Notice of Completion applicable to each Site. The covenants not to sue provided under this Consent Decree shall supersede the covenants not to sue provided to KPC under the terms of the respective East Twelve Mile, Ratz Harbor, Francis Cove, and Thorne Bay Landfills AOC's and provided to LP under the Thorne Bay Landfills AOC. These covenants not to sue extend only to KPC and LP and do not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY UNITED STATES

24. **General Reservations of Rights.** The United States reserves, and this Consent Decree is without prejudice to, all rights against KPC and LP with respect to all matters not expressly included within the United States' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against KPC and LP with respect to:

- (a) claims based on a failure by KPC or LP to meet a requirement of this Consent Decree;
- (b) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of any Site, or from the disposal by KPC or LP of any Waste Material at a Site (other than the passive migration of waste material previously released to the environment) after the lodging of this Consent Decree;
- (c) liability for damages for injury to, destruction of, or loss of natural resources, and for

the costs of any natural resource damage assessments at any Site, on behalf of a federal agency other than the Forest Service; and

(d) criminal liability.

However, with respect to any claims, actions or other matters reserved under this Paragraph 24, neither KPC nor LP admit any liability, waive any defenses, or, except to the extent provided for under Section XII (Covenant Not To Sue By KPC And LP), waive any claims.

25. Unknown Conditions and Information. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel KPC or LP (a) to perform further response actions relating to a Site, or (b) to reimburse the United States for additional costs of response at a Site if:

- (i) conditions at the Site, previously unknown to the Forest Service, are discovered, or
- (ii) information, previously unknown to the Forest Service, is received, in whole or in part,

and the Forest Service determines that these previously unknown conditions or this information together with other relevant information indicate that response actions taken at a Site are not protective of human health or the environment. However, with respect to any claims, actions or other matters reserved under this Paragraph 25, neither KPC nor LP admit any liability, waive any defenses, or, except to the extent provided for under Section XII (Covenant Not To Sue By KPC And LP) or Paragraph 27 (Allocation of Thorne Bay Landfills Costs Under Reopener), waive any claims.

26. For purposes of Paragraph 25, the information and the conditions known to the Forest Service shall include only that information and those conditions set forth in the Administrative Record compiled for each Site as of May 17, 2004; provided, however, that the Administrative Records for the East Twelve Mile, Ratz Harbor, Francis Cove, and Naukati Sites shall be

supplemented upon completion of work at the Site to reflect the work actually undertaken, and the Administrative Record for the Thorne Bay Landfills Site and the Thorne Bay Logging Camp Site shall be supplemented to include all documents relied upon in, or setting forth the conclusions of, the current EE/CA process and, periodically, to reflect the performance of any work required in the Action Memorandum resulting from the current EE/CA process. Without limiting the application of Paragraph 25 as to any other Site, with respect to the Thorne Bay Landfills Site, seeps containing iron or manganese and any resulting downstream conditions identified in the Administrative Record, including the EE/CA, shall be considered known conditions and information unless, based on appropriate sampling and statistical methods, there is a material adverse change, when taken as a whole, in seepage rate, chemical composition, concentration of seeps or of downstream conditions. With respect to the Connell Dam Site, the previously unknown conditions or information that may be considered for purposes of Paragraph 25 exclude any release or discharge, or threat of a release or discharge, of a naturally occurring substance that has accumulated behind Connell Lake Dam, or that has been or is being discharged or released into Ward Creek, as a result of the existence or operation of the dam unless KPC would be liable therefor under a federal or State environmental statute independently of any liability arising from its ownership or operation of the Connell Lake Dam or Connell Lake.

27. **Allocation of Thorne Bay Landfills Costs Under Reopener.** If the United States asserts a claim or issues an order against KPC pursuant to Paragraph 25 (Unknown Conditions and Information) with respect to the Thorne Bay Landfills Site and either (a) KPC does not dispute, or (b) to the extent a dispute exists, it is determined through dispute resolution under Section IX or in an enforcement action brought by the United States, that the conditions for requiring additional response action or response costs under Paragraph 25 are met and that KPC is liable for the response action(s) selected by the Forest Service or the costs thereof, KPC and the United States agree to allocate the costs of any such response action(s) not inconsistent with the National Contingency Plan,

to the extent such costs are not recovered from other parties, fifty percent to KPC and fifty percent to the Forest Service. Nothing herein shall prevent either the United States or KPC from pursuing any available cause of action or other remedy with respect to such additional response action(s) or costs against any person not a party to this Consent Decree. If the United States asserts a claim or issues an order against LP (whether based on alleged direct liability of LP or on KPC's alleged liability) pursuant to Paragraph 25 (Unknown Conditions and Information) with respect to the Thorne Bay Landfills Site, then LP shall have the same rights and obligations with respect thereto as KPC has in this Paragraph 27.

XII. COVENANT NOT TO SUE BY KPC AND LP

28. Subject to the reservations in Paragraphs 30-31, KPC and LP hereby covenant not to sue and agree not to assert any claims or causes of action against the United States relating to the Logging Facilities, the Connell Dam Site, or this Consent Decree as follows:

(a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law;

(b) any claims against the United States, including any department, agency, or instrumentality of the United States under CERCLA §§ 107 or 113 or AS 46.03.822 related to the Logging Facilities or the Connell Dam Site; or

(c) any claims arising out of response actions at or in connection with the Logging Facilities or the Connell Dam Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

29. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XIII. RESERVATION OF RIGHTS BY KPC AND LP

30. The covenants by KPC and LP set forth in Paragraph 28 shall not apply to claims to enforce the obligations of the United States or the Forest Service under this Consent Decree or, in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 24-27, or in the event the State brings a cause of action or issues an order with respect to a matter reserved by the United States in Paragraphs 24-27, but only to the extent that KPC's or LP's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

31. Except as specifically provided in Paragraphs 2, 3(b), and 5(a) of the Settlement Agreement (Appendix D), KPC and LP reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on the Forest Service's selection of response actions, or the oversight or approval of KPC's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

XIV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

32. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a signatory to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree

may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a signatory hereto.

33. The Parties acknowledge and agree that any obligations of the Forest Service to make payments or perform work under this Consent Decree can only be funded from appropriated funds legally available for such purposes. Nothing in this Consent Decree shall be interpreted as a commitment or requirement that the United States or the Forest Service undertake any obligation or make any payment in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, to the extent it applies, or any other applicable provision of law.

34. The Parties agree, and by entering this Consent Decree this Court finds, that KPC and LP are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The “matters addressed” for each of the Logging Facilities and the Connell Lake Site is defined as all claims for response or removal costs or response or removal actions, including, without limitation, such claims relating to operation, maintenance, or monitoring of the Thorne Bay Landfills Site, as well as claims for natural resource damages on behalf of the Forest Service, relating to any conditions or contamination existing on those Sites on or before the date of lodging of this Consent Decree, including all such conditions and contamination documented in the Administrative Record for each Site.

35. KPC and LP agree that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, such Party will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

36. KPC and LP also agree that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, such Party will notify in writing the United

States within 10 days of service of the complaint on it. In addition, such Party shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

37. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to any of the Sites, neither KPC nor LP shall assert, and neither may maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section X (Covenants Not to Sue by United States).

XV. RETENTION OF RECORDS

38. Regardless of any records retention policy to the contrary, until January 1, 2014, KPC, LP, and the Forest Service shall each preserve and retain the following records related to the Sites or to the Ketchikan, Thorne Bay, and Craig Ranger Districts of the Tongass National Forest and the areas of the Wrangell Ranger District where timber harvest or support activities or operations occurred for Timber Sale Contract a10fs - 1042 offerings at Anita Bay North, Bradfield Canal and Frosty: (a) all such existing records, as of January 31, 2004, retained or stored by KPC, LP, or the Forest Service; and (b) all such records created or received after January 31, 2004, at the above Ranger Districts or by KPC or LP. With respect to the Thorne Bay Landfills Site only, this records retention requirement shall continue until January 1, 2031. The records to be retained pursuant to this Paragraph do not include records related to lands and rights-of-ways transferred to other parties or to actions by other federal agencies on National Forest System lands.

39. After the conclusion of the applicable document retention period in the preceding Paragraph, KPC, LP, and the Forest Service may destroy or otherwise dispose of the covered records

unless retention is otherwise required by law.

XVI. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Consent Decree, notice is required to be given, or a document is required to be sent by one or more of the Parties to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, KPC, and LP, respectively.

AS TO THE UNITED STATES:

Director, Engineering
USDA Forest Service
Room 500 RPC
1601 Kent Street
Arlington, VA 22209

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

Deputy Assistant General Counsel for Pollution Control
Conservation and Environment Division
Office of the General Counsel
U.S. Department of Agriculture
Room 3351 South Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1412

Deputy Associate Regional Attorney
Office of the General Counsel
U.S. Department of Agriculture
1734 Federal Building
1220 S.W. 3rd Avenue
Portland, OR 97204-2825

and

Director, Aviation and Engineering Management
Alaska Region
United States Forest Service
P.O. Box 21628
Juneau, Alaska 99802-1628

AS TO KPC:

Ketchikan Pulp Company
c/o Louisiana-Pacific Corporation
Legal Department
Attn: General Counsel
805 S.W. Broadway, Suite 700
Portland, OR 97205-3303

and

Eric B. Fjelstad, Esq.
Perkins Coie LLP
1029 West Third Avenue, Suite 300
Anchorage, AK 99501

AS TO LP:

Louisiana-Pacific Corporation
Legal Department
Attn: General Counsel
805 S.W. Broadway, Suite 700
Portland, OR 97205-3303

and

Eric B. Fjelstad, Esq.
Perkins Coie LLP
1029 West Third Avenue, Suite 300
Anchorage, AK 99501

XVII. EFFECTIVE DATE

41. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVIII. RETENTION OF JURISDICTION

42. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIX. MODIFICATION

43. Modifications to this Consent Decree may be made by the Parties in writing and become effective upon approval by the Court.

44. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XX. INTEGRATION/APPENDICES

45. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree (including the appendices). The following appendices are attached to this Consent Decree:

(a) "Appendix A" is the East Twelve Mile AOC.

(b) "Appendix B" is the Francis Cove AOC.

(c) "Appendix C" is the Ratz Harbor AOC.

(d) "Appendix D" is the Settlement Agreement executed simultaneously with the execution of this Consent Decree by and between the United States, the Forest Service, KPC, and, for limited purposes only, LP.

(e) "Appendix E" is the Thorne Bay Landfills AOC.

(f) "Appendix F" is the Naukati Generator Cleanup Work Requirements.

(g) "Appendix G" is the Thorne Bay Landfills Site Action Memorandum dated February 9, 2004, as supplemented on March 5, 2004.

46. Appendices A, B, C, F, and G are incorporated into and shall be enforceable under this Consent Decree. Appendices D and E are attached for reference purposes only and shall not be incorporated into or enforceable under this Consent Decree.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

47. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. KPC and LP consent to the entry of this Consent Decree without further notice.

48. KPC and LP hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified KPC and LP in writing that it no longer supports entry of the Consent Decree. If, for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXII. SIGNATORIES/SERVICE

49. The undersigned representatives of KPC and LP and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice each certifies that he is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

50. This Consent Decree may be executed in any number of counterparts and by any combination of the signing entities in separate counterparts, each of which counterparts shall be deemed to be an original and all of which taken together shall constitute one and the same Consent Decree.

51. KPC and LP shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. KPC hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

52. KPC need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

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XXIII. FINAL JUDGMENT

53. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, KPC and LP in accordance with its terms. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 2004.

JAMES K. SINGLETON, Jr.
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of *United States v. Ketchikan Pulp Co.*

FOR THE UNITED STATES OF AMERICA

Date: _____

THOMAS L. SANSONETTI

Assistant Attorney General

Environment & Natural Resources Division

U.S. Department of Justice

Washington, DC 20530

WILLIAM D. BRIGHTON

Assistant Section Chief

Environmental Enforcement Section

Environment & Natural Resources Division

U.S. Department of Justice

Washington, DC 20044-7611

REGINA R. BELT, Trial Attorney

Environmental Enforcement Section

Environment & Natural Resources Division
U.S. Department of Justice
805 B Street, Suite 504
Anchorage, AK 99501-3657

ROBERT H. FOSTER, Trial Attorney
Environmental Defense Section
Environment & Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of *United States v. Ketchikan Pulp Co.*

FOR THE USDA FOREST SERVICE

Date: _____

DENNY BSCHOR

Regional Forester

Alaska Region

USDA Forest Service

P.O. Box 21628

Juneau, AK 99802-1628

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of *United States v. Ketchikan Pulp Co.*

FOR KETCHIKAN PULP COMPANY

Date: _____

CHRIS PAULSON

President and General Manager

Ketchikan Pulp Company

P.O. Box 6600

Ketchikan, AK 99901

Agent authorized to accept service on behalf of the above-signed Party:

Eric B. Fjelstad

Perkins Coie LLP

1029 West Third Avenue, Suite 300

Anchorage, AK 99501-1981

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of *United States v. Ketchikan Pulp Co.* for the limited purpose of guaranteeing certain obligations of KPC and providing financial assurance therefor, granting and receiving covenants not to sue, and receiving protection from contribution actions, as set forth in the Consent Decree.

FOR LOUISIANA-PACIFIC CORPORATION

Date: _____

CURTIS M. STEVENS

Executive Vice President, Administration, and
Chief Financial Officer

Agent authorized to accept service on behalf of the above-signed Party:

Eric B. Fjelstad, Esq.

Perkins Coie LLP

1029 West Third Avenue, Suite 300

Anchorage, AK 99501